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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 73-891

SIEGFRIED WACHTEL and Wife, ROBERTA S. WACHTEL,
Petitioners,

vs.

BRYCE WEST and Wife, FRANCES WEST,
Respondents.

REPLY TO
PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit

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Bryce West and wife, Frances West, your respondents, files this their reply to the Petition for Writ of Certiorari heretofore filed to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above captioned cause on April 11, 1973, and issued as a mandate on June 18, 1973.

The respondents herein adopt as presented in petitioners' petition:

Opinions Below
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STATEMENT OF THE FACTS

On October 28, 1970, the Respondents conveyed to the Petitioners by general warranty deed a house and lot for a total consideration of Fourteen Thousand Five Hundred ($14,500.00) Dollars; the Petitioners had previously paid to the Respondents Three Hundred ($300.00) Dollars in cash as a down payment; the Petitioners secured a first mortgage loan from Home Federal Savings and Loan Association of Manchester, Tennessee, in the amount of Eleven Thousand Two Hundred Fifty Dollars ($11,250.00), repayable in monthly installments and bearing interest at eight and one-half (8½) per cent per annum, which was paid over to the Respondents; the security interest subject to this litigation was by the way of a deed of trust executed by the Petitioners to a trustee for the benefit of the Respondents to secure and make certain the payment of one certain promissory note dated October 28, 1970, in the principal sum of Two Thousand Nine Hundred Fifty Dollars ($2,950.00) (balance of consideration) due and payable in five monthly installments, four monthly installments of Three Hundred Dollars ($300.00) per said installment and the fifth and last installment being due in the amount of One Thousand Seven Hundred Fifty ($1,750.00) Dollars, bearing interest at eight and one-half (8½) per cent per annum after date until paid in full.

The first and second mortgage transactions were consummated jointly on October 28, 1970. Both the first and

second mortgage notes provided for a simple eight and one-half (8½) per cent per annum interest rate.

The Honorable District Judge properly noted in his Memorandum Opinion (App. p. A-11) that, first, Section 130 of the Act required that any suit based on that section be brought within one year after the occurrence of any "violation" under the Act. The District Court held that the Act itself contemplates that "a violation" occurs at the moment a loan transaction is consummated; accordingly, that the limitation of 15 U.S.C. § 1640 (e) commences to run at that moment. (App. p. A-11) The District Court properly held that the Complaint was therefore barred by the one year limitation imposed by Section 130 and dismissed the suit at the cost of the plaintiffs. (App. p. A-12)

The United States Court of Appeals for the Sixth Circuit properly affirmed the judgment of the District Court and in so doing stated:

> "The Act does not define the term (when) 'the credit is extended,' prior to which time it requires disclosures to be made. However, Regulation Z, § 226.2 (cc) is helpful in this respect. It reads as follows:
>
> (cc) A transaction shall be considered consummated at the time a contractual relationship is created between a creditor and a customer irrespective of the time of performance of either party.
>
> It thus appears that a credit transaction which requires disclosures under the Act is completed when the lender and borrower contract for the extension of credit. The disclosures must be made sometime before this event occurs. If the disclosures are not made, this violation of the Act occurs, at the latest, when the parties perform their contract." (App. p. A-7)

ARGUMENT

The Respondents respectfully submit that the defense to the action brought in the District Court was based on Section 130 (15 U.S.C., § 1640e), which provides as follows:

> "(e) Any action under this section may be brought in any United States district Court, or in any other court of competent jurisdiction, within one year from the date of **the occurrence of the violation.**" 15 U.S.C., § 1640. (Emphasis added.)

It is undisputed that the consumer credit involved in this litigation was extended on October 28, 1970, and that this action was commenced on April 25, 1972, which is obviously one year five months and 28 days after the alleged violation of the Truth-in-Lending Act. The Act itself contemplates that "a violation" occurs at the moment a loan transaction is consummated; accordingly, that the limitation of 15 U.S.C., § 1640(e), commences to run at that moment. As has been observed:

> • • • The Act requires that "each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this part." 15 U.S.C., § 1631(a). For failure in connection with any consumer credit transaction to disclose to any person information required by 15 U.S.C., § 1638(a), the Truth-in-Lending Act imposes on such creditor civil liability, 15 U.S.C., § 1640 • • • **Mourning v. Family Publications Service, Inc.**, C.A. 5th (1971), 499 F. (2d) 235, 240.

It is inconceivable to the writer that any other interpretation of the Act, "the occurrence of the violation," could have occurred other than when such loan transaction was consummated, namely October 28, 1970.

Section 121 of the Act (15 U.S.C., § 1631) provides:

> "(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended and upon whom a finance charge is or may be imposed, the information required under this part."

It is clear that the creditor must disclose to the consumer at the time consumer credit is extended and thus the Act clearly establishes the time that the requirement is to be met.

It is conceded by the writer that Congress in the formulation of the Truth-in-Lending Act intended to protect the less sophisticated consumer but it is respectfully submitted that Congress placed a limitation of one year from the date of the violation for a consumer to act in order that irreparable harm would not come to a lender such as has occurred in the case at bar. In order for the lender to be also protected a suit should be brought strictly within the time and within the manner prescribed by statute. It was expressed in **Yuri Yajima v. U. S.**, D.C. N.Y. 1946, 6 F.R.D. 260, that the court is powerless to extend the time prescribed by statute.

Buford v. American Finance Company, 333 F. Supp. 1243 (1971), clearly acknowledges (at page 1252) that a claim under the Truth-in-Lending Act must be brought within one year of the alleged violation. The court in **Buford v. American Finance Company**, supra, did not in any way extend the one year statute of limitation but simply held that the members of the proposed class who had relied upon the maintenance of the class action and could prove that reliance would be sufficient to toll the statute of limitation.

The avowed purpose of the disclosure provisions of the Truth-in-Lending Act is:

"... to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 15 U.S.C. § 1601; **Buford v. American Finance Company**, 333 F. Supp. 1243 at page 1245.

The credit terms of this consumer credit was a simple interest rate of eight and one-half (8½) per cent, which can only be expressed in simple and clear terms. The petitioners do not complain about the lack of knowledge of credit terms but simply complain about not having been advised that they had the right to rescind under the statute. Hypothetically, if the petitioners' contentions be the law then there could be a 30 year mortgage note executed, the creditor could pay on the note for 25 years and if there was no disclosure of the right to rescind he could at the end of the 25 years rescind the contract, be reimbursed for his full finance charges and all along would have lived in the residence for 25 years. Such an inequitable situation should not exist and it is clear that it was the intent of Congress that such inequities not become realities and thusly enacted a one year statute of limitation to commence to run the moment the loan transaction was consummated.

SUMMARY

Respondents respectfully submit that the ruling of the District Court and the action affirming the District Court by the United States Court of Appeals for the Sixth Circuit in dismissing the complaint in this cause based on Section 130 of the Truth-in-Lending Act (15 U.S.C. § 1640), was proper and the Writ of Certiorari should be denied.

Respectfully submitted

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